

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054**

In the Matter of)	
)	
Petition of Qwest Corporation for Forbearance)	WC Docket No. 07-97
Pursuant to 47 U.S.C. § 160(c) in the Denver,)	
Minneapolis-St. Paul, Phoenix, and Seattle)	
Metropolitan Statistical Areas)	

REPLY TO OBJECTION

Integra Telecom, Inc. ("Integra"), through its counsel, hereby files this Reply to Qwest's Objection¹ to the June 15, 2007 acknowledgement of confidentiality filed by Mr. Dudley Slater, CEO of Integra pursuant to the *First Protective Order* in this proceeding.²

The *First Protective Order* set forth safeguards for the protection of confidential information submitted in this proceeding, limiting disclosure of confidential information to, among others, counsel, outside consultants or experts retained to render professional services "if disclosure is reasonably necessary for such persons to render professional services in this proceeding."³ Those individuals to whom confidential information is disclosed must certify that "he/she understands th[e] *First Protective Order*, agrees to abide by its terms, and understands

¹ See Motion of Qwest Corporation to Object to the Disclosure of Qwest's Confidential Information to the Chief Executive Officer of Integra Telecom, WC Docket No. 07-97 (filed June 19, 2007) ("Objection").

² See Acknowledgement of Confidentiality of Dudley Slater and Susan Gately, Integra Telecom Inc., WC Docket No. 07-97 (filed June 15, 2007) ("Confidentiality Acknowledgement").

³ *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas*, First Protective Order, DA 07-2292, at ¶ 3 (rel. June 1, 2007).

that unauthorized disclosures of the stamped confidential documents are prohibited.”⁴ Persons obtaining access to stamped confidential documents under the *First Protective Order* can use the confidential information “only in the conduct of this proceeding and any judicial proceeding arising therefrom, and shall not use such information for any other purpose, including business, governmental, commercial, or other administrative or judicial proceedings.”⁵

In its Objection, Qwest states that barring Mr. Slater’s access to the confidential information “will not deny Integra vigorous representation in this proceeding” because Integra’s counsel can provide legal advice to, or consult with, Mr. Slater regarding this proceeding, “as long as they do not disclose any confidential information to him while providing that advice.”⁶

Mr. Slater is substantively and actively involved in every facet of Integra’s participation in this proceeding. Mr. Slater is the person most knowledgeable in many aspects of the subject matters at issue in this proceeding. Mr. Slater directs inside and outside counsels’ participation in this proceeding and is responsible for making important company decisions that will be affected by the outcome in this proceeding. In light of Mr. Slater’s active and responsible role of

⁴ *Id.*

⁵ *Id.* at ¶ 7 (emphasis added). Furthermore, the Confidentiality Acknowledgement clearly establishes that Mr. Slater “understands, in particular, that unauthorized disclosure, or the use of the information for competitive commercial or business purposes, will constitute a violation of the *First Protective Order*.” Confidentiality Acknowledgement at Attachment A (emphasis added).

⁶ Motion to Object at 2-3. Qwest also cites to two cases where courts have restricted the access of high-level executives, such as CEOs, to competitively sensitive information, both of which are distinguishable from this proceeding. See *id.* citing *Phillips Petroleum Co. v. Rexene Prods.*, 158 F.R.D. 43 (D. Del. 1994) and *Safe Flight Instr. Corp. v. Sunstrand Data Control Inc.*, 682 F. Supp. 20 (D. Del. 1988). Although the court in *Phillips Petroleum* denied a requested a modification of a protective order to allow a CEO access to confidential data, the court’s denial was based largely on the fact that the protective order restricting the CEO’s access was negotiated by both parties and had been in force for some time. See *Phillips Petroleum*, 158 F.R.D. at 46-47. The court in *Safe Flight* denied access to confidential information to the plaintiff’s president because the information at issue was technological information which courts afford “fuller protection ... than that extended to ordinary business information.” See *Safe Flight*, 682 F. Supp. at 22. The instant proceeding does not involve the sort of technical information at issue in *Safe Flight*, nor was Integra involved in negotiating the *First Protective Order* as in *Phillips Petroleum*.

participation in this proceeding, he falls within the scope of persons intended by the *First Protective Order* to have access to protected confidential information subject to the specified safeguards.

Moreover, Mr. Slater must be in a position to affirmatively direct and assist Integra's counsel in determining Integra's strategy and to discuss the issues related to the petitions for forbearance with Integra's counsel in a meaningful manner. Contrary to Qwest's suggestion, the inability of Integra's counsel to consult with Mr. Slater about, and discuss, the confidential information submitted by Qwest will severely limit Integra's ability effectively to participate in this proceeding.

At the same time, Mr. Slater will be bound by the terms of the *First Protective Order*, which requires, *inter alia*, that he use the confidential information only in the conduct of this proceeding and that he will not use the confidential information for any other purpose, including business and commercial purposes. Moreover, Mr. Slater will be subject to the penalties set forth in paragraph 15 of the *First Protective Order* should he disclose or misuse the confidential information.⁷ Mr. Slater will be bound by any modifications to these requirements that the Commission might adopt in response to Qwest's pending Petition to Modify Protective Order.⁸

⁷ See *First Protective Order* at ¶ 15.

⁸ Qwest Petition to Modify Protective Order, filed June 29, 2007.

Accordingly, Integra respectfully requests that the Commission deny Qwest's Objection and permit Mr. Slater access to the confidential information submitted in this proceeding, subject to the full protection and safeguards set forth in the *First Protective Order*.

Respectfully submitted,

INTEGRA TELECOM, INC.

A handwritten signature in black ink, appearing to read 'R. Blau', written over a horizontal line.

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August 1, 2007

CERTIFICATE OF SERVICE

I, Sonja Sykes-Minor do hereby certify that the foregoing Reply to Motion to Object was served this 1st day of August, 2007 by delivering true and correct copies thereof, first class postage prepaid, to the United States Postal Service, addressed as follows:

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